

REL: July 8, 2022

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

# Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

---

CR-21-0394

---

Donald Delance Washington

v.

State of Alabama

Appeal from Montgomery Circuit Court  
(CC-20-616)

WINDOM, Presiding Judge.

Donald Delance Washington appeals the revocation of his probation by the Montgomery Circuit Court. Washington was convicted of third-degree robbery and was sentenced to 70 months in prison. See § 13A-8-43, Ala. Code 1975. His sentence was split, and he was ordered to serve

13 months in prison followed by 12 months on probation. Washington began his probationary term on June 30, 2021.

Following Washington's arrest for first-degree robbery, see §13A-8-41, Washington's probation officer filed a delinquency report alleging that Washington had violated the terms and conditions of his probation by committing the new offense. A probation-revocation hearing was held on January 18, 2022. During the hearing, Officer Trenton Sink of the Montgomery Police Department testified to the details of his robbery investigation and Probation Officer Robert Adams testified that, when Washington was placed on probation, he was made aware of the terms and conditions of probation. Following the testimony, the circuit court revoked Washington's probation and ordered that he serve the balance of his original sentence. This appeal follows.

On appeal, Washington argues that the evidence was insufficient to support the revocation of his probation. Specifically, he claims that his probation was revoked based solely on hearsay evidence. This Court agrees.

During the revocation hearing, Officer Trenton Sink testified that he responded to a report of a robbery at the Econo Lodge motel in

Montgomery on December 9, 2021. William Argo told Officer Sink that from his motel room he had seen a man attempting to steal a generator from his truck. Argo went to the parking lot and intervened in the attempted theft; the man then robbed Argo and fled. Argo provided Officer Sink with a description of the man. Officer Sink reviewed surveillance footage from the motel; it did not capture the robbery, but Officer Sink did see a man on the premises who matched the description given by Argo. Other officers who were familiar with Washington identified the man in the video as Washington, noting that he often visited the premises of the motel and that he had a history of committing robberies. Officer Sink created a photographic lineup and sent it to Argo, who was in another state at the time. Officer Sink testified that Argo selected Washington from the lineup as the man who had robbed him. When Officer Sink took Washington into custody, Washington admitted to Officer Sink that he had been at the motel on the day of the robbery and that he was the individual pictured in the surveillance footage; however, he denied that he had robbed anyone.

"A probation-revocation hearing is a bench trial and the trial court is the sole fact-finder." Smiley v. State, 52 So. 3d 565, 568 (Ala. 2010) (quoting Ex parte Abrams, 3 So. 3d 819, 823 (Ala. 2008)).

""Absent a clear abuse of discretion, a reviewing court will not disturb a trial court's conclusions in a probation-revocation proceeding, including the determination whether to revoke, modify, or continue the probation. A trial court abuses its discretion only when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which it rationally could have based its decision.""

"McCain v. State, 33 So. 3d 642, 647 (Ala. Crim. App. 2009) (quoting Holden v. State, 820 So. 2d 158, 160 (Ala. Crim. App. 2001) (citations omitted)). Furthermore, we review de novo those cases that involve only issues of law and the application of the law to the undisputed facts. Ex parte Walker, 928 So. 2d 259, 262 (Ala. 2005). "

Walker v. State, 294 So. 3d 825, 829 (Ala. Crim. App. 2019).

"To determine whether the evidence presented at a probation-revocation hearing is sufficient to revoke a defendant's probation for committing a new offense, the Alabama Supreme Court has set out the following standard:

""'Probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime. A proceeding to revoke probation is not a criminal prosecution, and we have no statute requiring a formal trial. Upon a hearing of this character, the court is not bound by strict rules of evidence, and the alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt.'"

""Martin v. State, 46 Ala. App. 310, 312, 241 So. 2d 339, 341 (Ala. Crim. App. 1970) (quoting State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967) (citation omitted)). Under that standard, the trial court need 'only be reasonably satisfied from the evidence that the probationer has violated the conditions of his probation.' Armstrong v. State, 294 Ala. 100, 103, 312 So. 2d 620, 623 (1975). Absent a clear abuse of discretion, a reviewing court will not disturb the trial court's conclusions. See Moore v. State, 432 So. 2d 552, 553 (Ala. Crim. App. 1983), and Wright v. State, 349 So. 2d 124, 125 (Ala. Crim. App. 1977)."

"Ex parte J.J.D., 778 So. 2d [240] at 242 [(Ala. 2000)]. See Rule 27. 6(d)(1), Ala. R. Crim. P. (providing that at a revocation hearing the "court may receive any reliable, relevant evidence not legally privileged, including hearsay," and the court must be reasonably satisfied from the evidence that a violation of probation occurred before revoking probation). Whether to admit hearsay evidence at a probation-revocation hearing is within the discretion of the court. Puckett v. State, 680 So. 2d 980, 981 (Ala. Crim. App. 1996). However,

""[i]t is well settled that hearsay evidence may not form the sole basis for revoking an individual's probation. See Clayton v. State, 669 So. 2d 220, 222 (Ala. Cr. App. 1995); Chasteen v. State, 652 So. 2d 319, 320 (Ala. Cr. App. 1994); and Mallette v. State, 572 So. 2d 1316, 1317 (Ala. Cr. App. 1990). 'The use of hearsay as the sole means of proving a violation of a condition of probation denies a probationer the right to confront and to cross-examine the persons originating the information

that forms the basis of the revocation.'  
Clayton, 669 So. 2d at 222."

"Goodgain v. State, 755 So. 2d 591, 592 (Ala. Crim. App. 1999).

"To summarize, at a probation-revocation hearing a circuit court must examine the facts and circumstances supporting each alleged violation of probation. The court may consider both hearsay and nonhearsay evidence in making its determination. The hearsay evidence, however, must be reliable, and it cannot be the sole evidence supporting the revocation of probation. Thus, a circuit court must assess the credibility of the particular witnesses at the probation-revocation hearing, the reliability of the available evidence, and the totality of the evidence in each individual case to determine whether it is reasonably satisfied that the probationer has violated a term of his or her probation and that revocation is proper. Moreover, an appellate court will disturb a circuit court's decision only if the record establishes that the circuit court exceeded the scope of its discretion.

"Sams v. State, 48 So. 3d 665, 667-68 (Ala. 2010).

"Recently, in Ex parte Dunn, 163 So. 3d 1003 (Ala. 2014), the Supreme Court refined this standard, explaining that, when the State presents a mixture of hearsay and nonhearsay evidence to show that a defendant violated his probation by committing a new offense, the circuit court cannot revoke a defendant's probation for that violation unless the nonhearsay evidence connects the defendant to the alleged offense. In that case, the Supreme Court reversed this Court's decision upholding the circuit court's revocation of Dunn's probation for committing a new offense because 'the

State [had] not corroborated by nonhearsay evidence the hearsay evidence connecting the pants, and by extension Dunn, to the burglary.' 163 So. 3d at 1006. See also Wright v. State, [292 So. 3d 1136] (Ala. Crim. App. 2019) (reversing the circuit court's revocation of Wright's probation for committing a new offense because the nonhearsay evidence that Wright was merely present at a party at the time a shooting occurred did not sufficiently connect him to the alleged murder); and Miller v. State, [273 So. 3d 921] (Ala. Crim. App. 2018) (reversing the circuit court's revocation of Miller's probation because 'the State failed to present any nonhearsay evidence indicating that Miller had, in fact, committed the alleged arson').

"In sum, Sams and Dunn establish that hearsay is admissible at a probation-revocation hearing to show that a defendant committed a new offense and that the circuit court can rely on hearsay to revoke a defendant's probation. But those cases warn that hearsay cannot serve as the sole basis for revoking a defendant's probation, and instruct that, although the State does not have to prove every element of the alleged new offense with nonhearsay evidence, the State must present sufficient nonhearsay evidence connecting the defendant to the commission of the alleged new offense."

Walker, 294 So. 3d at 831-32 (footnotes omitted).

In this case, the State presented only hearsay evidence to support a finding that Washington had violated the terms and conditions of his probation by committing the new offense of robbery. Officer Sink was the only witness to testify about Washington's alleged violation, and the bulk of Officer Sink's testimony was hearsay evidence. Although this evidence was admissible, the State still had the burden to present nonhearsay

evidence that would connect Washington to the robbery. The State's nonhearsay evidence – Officer Sink's testimony about his viewing of the surveillance footage and about the contents of Washington's statement to Officer Sink – merely connected Washington to the parking lot of the motel. This evidence was insufficient to sustain the circuit court's revocation of Washington's probation. See Wright v. State, 292 So. 3d 1136, 1139 (Ala. Crim. App. 2019) (nonhearsay evidence indicating that Wright was merely present at a party at the time a shooting occurred did not sufficiently connect him to the alleged murder).

Because the State failed to present sufficient nonhearsay evidence connecting Washington to the alleged violation of his probation, the circuit court erred in revoking his probation. Accordingly, this Court reverses the circuit court's order revoking Washington's probation and remands this case for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**

Kellum, McCool, Cole, and Minor, JJ., concur.